



Office of Inspector General

U.S. Department of State • Broadcasting Board of Governors

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Office of Evaluations and Special Projects

March 2018

Management Assistance Report: Cultural Property Advisory Committee Reporting Under the Federal Advisory Committee Act

MANAGEMENT ASSISTANCE REPORT

Summary of Review

In response to a request from Congress, the Office of Inspector General (OIG) recently concluded a review of the Cultural Property Advisory Committee's (CPAC) compliance with reporting requirements under the Federal Advisory Committee Act (FACA). Among other requirements, FACA requires advisory committees that hold closed meetings to share summaries of its activities with the public. OIG requested these summary documents from the Bureau of Educational and Cultural Affairs (ECA), the Department of State (Department) office that provides support for CPAC. ECA responded that it did not issue such summaries. OIG recommends that the Department issue a public report at least annually with a summary of CPAC activities, as required by FACA.

BACKGROUND

CPAC is a statutory advisory committee established to advise the Department on the actions the United States should take in response to requests from certain countries for assistance in protecting cultural property by enacting import restrictions.¹ The Committee is composed of eleven members appointed by the President. Some members represent the interests of museums; some are experts in the fields of archaeology, anthropology, ethnology, or related areas; some are experts in the international sale of archaeological, ethnological, and other cultural property; and some represent the interest of the general public.

FACA was enacted to ensure that advisory committees adhere to standards and uniform procedures and that they inform Congress and the public about their purpose, membership, activities, and cost.² The General Services Administration (GSA) is charged with issuing guidance to advisory committees to improve their performance, as well as regulations under FACA.³ CPAC is subject to FACA. However, its provisions relating to open meetings, public notice, public participation, and public availability of documents do not apply under certain circumstances. In particular, they do not apply whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in its proceedings would compromise the Government's negotiating objectives or bargaining positions on the negotiations of any agreement regarding the trade in cultural artifacts.⁴

While CPAC has the authority to hold closed meetings pursuant to these provisions, it must make a written determination of the bases for the closure and must comply with FACA reporting requirements under subsection 10(d) of FACA. In particular, subsection 10(d) permits closure of all or part of a committee meeting only if the Designated Federal Officer of CPAC obtains prior approval to do so after submitting a request to the head of the agency. That request must cite the specific exemption(s) of the Government in the Sunshine Act⁵ that justify the closure.⁶ A copy of this determination must be made available to the public.⁷ If CPAC holds a closed

¹ Convention on Cultural Property Implementing Act, Pub. L. No. 97-446, Title III, § 306 (Jan. 12, 1983), *codified at* 19 U.S.C. § 2605.

² 5 U.S.C. app. §2(b)(5).

³ 5 U.S.C. app. §§ 7(c), (d)(1).

⁴ 19 U.S.C. § 2605(h).

⁵ 5 U.S.C. § 552b(c). The Government in the Sunshine Act requires, with ten specified exemptions, that every portion of every meeting of a federal agency shall be open to public observation.

⁶ 41 C.F.R. § 102-3.155.

⁷ 41 C.F.R. § 102-3.155(d).

meeting, the committee must, at least annually, issue a public report with a summary of the committee's activities and other matters that would be informative to the public.⁸

FINDINGS

Based on a congressional request, OIG initiated a review of CPAC's compliance with FACA and other reporting requirements. ECA provided documentation that CPAC complies with most provisions of FACA, including providing public announcements in the *Federal Register* of meetings and making requests and receiving determinations to close meetings. However, CPAC does not issue an annual comprehensive report that summarizes the activities of closed meetings, as required by FACA.⁹

According to ECA, it does not need to provide such a report, because it discloses information about CPAC to the public in several other ways. In addition to the *Federal Register* notices of meetings, the Department publishes in both the *Federal Register* and on ECA's public website the outcomes of CPAC deliberations, the text of agreements with requesting countries, and actions to implement the import restrictions. Additionally, CPAC provides information to GSA for the Annual Comprehensive Review, which is publicly available on GSA's website.¹⁰ The GSA FACA database lists titles and dates of CPAC meetings and the titles of CPAC issued reports, in addition to other general information about the committee. Based on advice from the Office of Legal Adviser and the Department's FACA office, ECA concluded that it has satisfied the annual summary of activities requirement under FACA.

OIG consulted with legal officials at GSA, the agency charged with issuing guidance and regulations under FACA, regarding the Department's contention that it has satisfied the annual report required by FACA. GSA disputed the Department's assertion and stated that the annual report required under subsection 10(d) of FACA is wholly separate from the other reporting required under FACA. GSA confirmed that CPAC must issue an annual report, available to the public, with meaningful summaries of its activities during the closed portions of its meetings.

Based on GSA's analysis and its position as the entity responsible for construing the relevant statute, OIG agrees that the Department should issue a separate annual report as mandated by the statutory language

RECOMMENDATION

OIG makes one recommendation to the Bureau of Educational and Cultural Affairs. Its complete response can be found in the appendix.

Recommendation 1: The Bureau of Educational and Cultural Affairs should ensure that the Cultural Property Advisory Committee complies with all reporting requirements under the

⁸ 5 U.S.C. app. § 10(d); 41 C.F.R. § 102-3.175(c).

⁹ 5 U.S.C. app. § 10(d).

¹⁰ 41 C.F.R. § 102-3.175(b). Information about every Federal advisory committee is available at <https://www.facadatabase.gov/>.

Federal Advisory Committee Act and issues, at least annually, a report with a summary of activities that provides the public with information regarding the committee's closed meetings.

Management Response: In its February 16, 2018, response, the Bureau of Educational and Cultural Affairs concurred with this recommendation and confirmed that this reporting will commence in the first quarter of 2019 with the submission of the 2018 report.

OIG Reply: The recommendation can be closed when OIG receives a copy of the 2018 report.

APPENDIX: MANAGEMENT RESPONSE



United States Department of State

Washington, D.C. 20520

UNCLASSIFIED

MEMORANDUM

February 22, 2018

TO: OIG – Jeffrey McDermott

FROM: ECA – Jennifer Zimdahl Galt

Subject: Draft Report – *Management Assistance Report: Cultural Property Advisory Committee Reporting Under the Federal Advisory Committee Act*

Thank you for the opportunity to provide our comments on the subject draft OIG Management Assistance Report, Recommendation 1.

Recommendation 1: The Bureau of Educational and Cultural Affairs should ensure that the Cultural Property Advisory Committee complies with all reporting requirements under the Federal Advisory Committee Act and issue, at least annually, a report with a summary of activities that provides the public with information regarding the committee's closed meetings.

Management Response to Draft Report (02/17/2018): The Bureau of Educational and Cultural Affairs (ECA) concurs with the recommendation. In addition to ongoing outreach undertaken in the interest of transparency of the Cultural Property Advisory Committee activities, ECA will develop and implement a process to issue an annual report, available to the public, summarizing the activities of the Committee during the closed portions of its meetings pursuant to subsection 10(d) of the Federal Advisory Committee Act. As confirmed in consultation with OIG, this reporting will commence in the first quarter of 2019 with the submission of the 2018 report.

Approved: ECA/P: Alyson Grunder (ok)

Drafted: ECA/P/C: Maria P. Kouroupas, ext. 2-6197

Cleared: ECA/P/C: Cari Enav (ok)

L/M: Alice M. Kottmyer (ok)

L/PD: Thomas Weatherall (ok)

CGFS/GAO: Julianne Shinnick (ok)



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Office of Inspector General • U.S. Department of State • P.O. Box 9778 • Arlington, VA 22219